

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FRAN SIMONTACCHI,

Plaintiff,

v.

STATE OF NEVADA, ex rel., its
DEPARTMENT OF PUBLIC SAFETY, et al.,

Defendants.

3:07-CV-00407-LRH-VPC

ORDER

Before the court is the defendants' (collectively, "the Department") Motion to Dismiss (#5)¹ pursuant to Fed. R. Civ. P. 12(b)(6). There has been no response, but plaintiff Fran Simontacchi ("Simontacchi") has filed an amended complaint (#6).

I. Factual Background

Simontacchi is an employee of Nevada's Department of Public Safety, Division of Parole and Probation. (First Am. Compl. (#6) at 1.) On July 6, 2004, Simontacchi sustained an injury at work. She filed for workers' compensation, and her claim was approved. *Id.* at 2. On July 7, 2005, the Department denied Simontacchi's request to receive one year's salary in lieu of compensation for her injury, pursuant to Nev. Rev. Stat. § 281.153. *Id.* The Department justified its decision by citing a budget problem, stating that providing the salary-in-lieu-of-compensation

¹Refers to the court's docket number.

1 option is discretionary, and stating that the Department does not provide this option. *Id.*

2 In response to this decision, Simontacchi filed a grievance in July, 2005, with the
3 Department's Employment Management Committee ("EMC"). *Id.* at 3. On March 7, 2006, the
4 EMC dismissed the grievance because Simontacchi had been granted "4800 time"² for her injuries.
5 *Id.* However, the EMC "instructed the Department of Public Safety to address the disparity and
6 impact of use of 4800 time and implement a program that provides 4800 time to all peace officers."
7 *Id.*

8 On February 12, 2006, Simontacchi again injured herself on the job. *Id.* at 4. The new
9 injury was an exacerbation of the earlier injury. *Id.* Simontacchi was denied 4800 time for this
10 injury, and the Department ordered her to return to work on restricted duty. *Id.* Simontacchi
11 subsequently filed another grievance with the EMC in 2006. *Id.* The EMC "acceded to the
12 correctness" of Simontacchi's claim, but denied payment because the claim at this point was one
13 year old. *Id.*

14 Simontacchi alleges that each of the defendant individuals caused a violation of her civil
15 rights by denying or participating in the denial of her request for salary in lieu of compensation. *Id.*
16 at 2-3. Simontacchi also alleges that males in the Department received 4800 time under
17 substantially similar circumstances to those in which Simontacchi was denied 4800 time. *Id.* at 4.
18 She claims the discrimination is intentional. *Id.*

19 **II. Discussion**

20 Simontacchi filed her First Amended Complaint (#6) fourteen days after the Department
21 filed its Motion to Dismiss (#5). Simontacchi's First Amended Complaint addresses most of the
22 issues raised by the Department's motion to dismiss. Furthermore, claims alleged in the original
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24 ²This term refers to payment provided Police Officers and Firefighters for time off for catastrophic
25 injuries. The term evidently originated in California and refers to Section 4800 of the California Labor Code.
(Mot. to Dismiss (#5) at 4 n.1.)

1 complaint, and addressed in the motion to dismiss, are absent from the amended complaint. It
2 therefore appears that the amended complaint was filed in response to the motion to dismiss. In
3 light of the filing, the motion to dismiss is moot.

4 IT IS THEREFORE ORDERED the Department's Motion to Dismiss (#5) is DENIED as
5 moot.

6 IT IS SO ORDERED.

7 DATED this 23rd day of June, 2008.



10 LARRY R. HICKS
11 UNITED STATES DISTRICT JUDGE
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